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Attorneys for Defendant MICHAEL L. PHILPOT

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

NORTH AMERICAN COMPANY FOR LIFE  
AND HEALTH INSURANCE,  
Plaintiff,  
v.  
MICHAEL L. PHILPOT, an individual,  
VIRGINIA B. HIRSCH, an individual, JOHN  
B. KUYKENDALL, an individual, RENE  
ALEJANDRO LACAPE, an individual C.  
RICHIE MCNAMEE, an individual and  
HECTOR PAEZ VALDEZ, an individual  
Defendants.

Case No. 08 CV 0270 BEN NLS

**NOTICE OF MOTION TO DISMISS  
FOR FAILURE TO STATE A CLAIM  
[F.R.C.P. 12(B)(6)] OR,  
ALTERNATIVELY, MOTION FOR A  
MORE DEFINITE STATEMENT  
[F.R.C.P. 12(E)]**

(Filed concurrently with Motion to  
Dismiss; Declaration of Michael J. Sachs  
and Request For Judicial Notice)

Date: July 21, 2008  
Time: 10:00 a.m.  
Crtrm: 3

Complaint Filed: February 13, 2008  
Trial Date: None Set

TO PLAINTIFF AND ITS ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on July 21, 2008 at 10:00 a.m., or as soon thereafter as counsel can be heard, Defendant, Michael L. Philpot will move the above entitled Court, located at 880 Front Street, San Diego, CA 92101-8900, for an order dismissing the Complaint or, in the alternative, requiring Plaintiff to provide a more definite statement in its Complaint. This Motion is brought pursuant to *Federal Rules of Civil Procedure* ("F.R.C.P.") 12(b)(6) and 12(e), and will be made on the following grounds:

1. The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action, all of which are based directly on alleged illegal scheme of “advancing premium payments or paying secret rebates” fail to state a claim upon which relief can be granted in that they do not allege sufficient facts to establish wrongful conduct since there is no prohibition in the State of California with regard to advancing premium payments or rebating. Further, Plaintiff’s Third Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing fails to state a tort claim. Lastly, Plaintiff has admitted it has suffered no damages.

2. In the alternative, Plaintiff should be required to provide a more definite statement in its Complaint pursuant to F.R.C.P. 12(e).

This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, the Request for Judicial Notice, the Declaration of Michael J. Sachs and attached exhibits filed herewith, the pleadings and papers filed herein, and upon such oral argument as may be presented at the hearing on this Motion.

Dated: June 13, 2008

Respectfully Submitted,

## **CALLAHAN & BLAINE, APLC**

By: s/Michael J. Sachs

Michael J. Sachs

Attorneys for Defendant, MICHAEL L. PHILPOT  
email: [michael@callahan-law.com](mailto:michael@callahan-law.com)

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1                   **PROOF OF SERVICE**

2                   I am a resident of the State of California, over the age of eighteen years, and not a  
3 party to the within action. I am employed in the office of a member of the bar of this Court at  
4 whose direction service was made. My business address is Callahan & Blaine, APLC, 3 Hutton  
Centre, Ninth Floor, Santa Ana, California 92707.

5                   On June 13, 2008, I electronically filed the following document with the Clerk of  
6 the Court using the CM/ECF system, which sent electronic notification of such filing to all other  
parties appearing on the docket sheet as listed below.

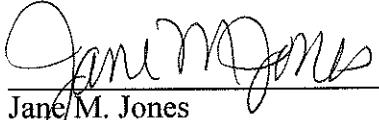
7                   **NOTICE OF MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**  
8                   **[F.R.C.P. 12(B)(6)] OR, ALTERNATIVELY, MOTION FOR A MORE DEFINITE**  
9                   **STATEMENT [F.R.C.P. 12(E)]**

10                  Miles Michael Cooley                   mcooley@reedsmit.com

11                  Raymond A. Greenberg                raylaw43@msn.com

12                  M. Andrew Schneider                 aschneider@tahlaw.com

13                  I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct. Executed on June 13, 2008 at Santa Ana, California.

14                    
15                  Jane M. Jones  
16                  email: jjones@callahan-law.com

17                  G:\2895\2895-02\POS efiling.wpd